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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/421,971	10/20/1999	FRED H. GAGE	SALK2350	4863

7590 07/28/2003
STEPHEN E REITER
FOLEY & LARDNER
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EXAMINER

MURPHY, JOSEPH F

ART UNIT	PAPER NUMBER
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1646

DATE MAILED: 07/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/421,971

Applicant(s)

GAGE ET AL.

Examiner

Joseph F Murphy

Art Unit

1646

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 19 May 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 15-18.

Claim(s) objected to: _____

Claim(s) rejected: 1-11, 13-14, 19-22.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____



Continuation of 3. Applicant's reply has overcome the following rejection(s): the rejection of claims 1-11, 13-22 under 35 USC 112 second paragraph.

Continuation of 5. does NOT place the application in condition for allowance because: The claims as amended are not in condition for allowance because the rejections under 35 USC ' ' 102(b) and 103 have not been overcome. Applicant argues that the amended claims distinguish from the prior art of U.S. Patent No. 5,830,462 (Crabtree et al.) because the claims require a single polypeptide comprising two or more functional units. However, claim 1 as amended recites that the functional protein units may be fused into a single polypeptide through the use of a linker interposed between the protein units. In claims 1 -11, 13-14, 19-22 the nature of the linker is not set forth as a limitation, and thus the disclosure in the '462 patent of chimeric proteins produced by treatment of cells with a cell permeable multivalent ligand reagent which binds to the receptor domain leading to dimerization or oligomerization of the chimeras anticipates the claims. Additionally, Applicant argues that the amendment overcomes the rejection under 35 USC ' 103 because neither U.S. Patent No. 5,830,462 (Crabtree et al.) nor U.S. Patent No. 6,265,173 (Evans et al.) teach or suggest a chimeric protein comprising at least two dimerization domains. However, as set forth above, since the nature of the linker is not set forth as a limitation, the claims still read on the use of a covalent linker to produce the single polypeptide, thus the claims are obvious in view of the '462 and '173 patents..



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